

AGENDA

NORTH DAKOTA RACING COMMISSION
Live and Telephone Emergency Meeting
500 North 9th Street, Bismarck, ND
Monday, January 31, 2005
1:00 p.m. (central time)

1. Legislative Update

House Bill No. 1389
House Bill No. 1390

Senate Bill No. 2340
Senate Bill No. 2344
Senate Bill No. 2352

2. Other Legislative Issues

If you plan to attend the meeting and will need special facilities or assistance relating to a disability,
please contact the Racing Commission at 701-328-4633.

NORTH DAKOTA RACING COMMISSION
Live and Telephone Emergency Meeting
500 North 9th Street, Bismarck, ND
Monday, January 31, 2005
1:00 p.m. (central time)

PRESENT:

Chairman James Boehm, Director Dean Meyer, Legal Council Bill Peterson, Administrative Officer Helen Tessmann

OTHER PRESENT:

OScott Horst
Leigh Backhaus
Ken Pawluk
Jim Tilton
Mike Cichy
Roger Thompson
Nancy Bayer

Chairman Boehm called the meeting to order at 1:10 p.m. and asked the Director Meyer to take the roll call as indicated below:

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|---------------------------------|---|-----------------|
| Commissioner Jim Arthaud | - | Here (By phone) |
| Commissioner Jim Clement | - | Here (By phone) |
| Commissioner Clarence Frederick | - | Here (By phone) |
| Commissioner DeAnn Pladson | - | Here (By phone) |
| Chairman Jim Boehm | - | Here |

Chairman Boehm announced the purpose of the meeting was an update on the five purposed 2005 legislative bills involving the North Dakota Racing Commission.

Agenda Item #1

1. Legislative Update

House Bill No. 1389

Director Meyer stated there were five different bills; two of them were brought in by Mike Cichy with Lien Games, that's 1389 and 1390. Representatives Kretschmar and Boucher are sponsors in the House and Fischer in the Senate. 1389 is a tax reduction bill and Mike why don't you just come up to the podium and you can explain it and then I will explain what has happened since the bill was introduced and kind of where we are right now.

Mike Cichy stated Bill #1389 modifies to the tax structure, the first \$11 million in the biennium, which breaks out to 5.5 million a year will not be changed as far as taxes and special fees. I did a poor job when I wrote the thing in the first place regarding the breakage and the intent was

that the Racing Commission would get the breakage from the first \$11 million in the biennium so that it would in effect mirror the laws that are there now. The second portion of it, which addresses the taxes and special fees after the first \$11 million, takes a quarter of one percent to the State to be broken out a sixteenth to the Purse Fund, a sixteenth to the Breed Fund and a sixteenth to the Promotion Fund and a sixteenth to the General Fund. Initially the way the bill read it would have allocated the breakage to the service provider. Dean, do you want me to go on?

Director Meyer stated, let me just touch on that. When Mike brought that to me and I looked at it, I thought it was no big thing because our handle now is about 5.2 million and the year 2004 is the first year without really a major bettor in the state so the 11 million dollar threshold I don't think we would reach without some major changes in something so I didn't think it would affect us other than the breakage. In talking with the horse producers or horse people, they were concerned with us losing that breakage because that is a bigger issue to us than a half of a percent. Just for example, just on Lien Games, not looking at Belcourt or Fargo, last year the breakage from Lien Games, which goes to the Promotion Fund, was \$23,000 and our half of a percent of the exotic bet was just under \$19,000, so breakage was more important to us than our percentage, so the change letting us retain that, this year would not have affected us with the amount we're handling. What the horsemen's concern, I talked with Representative Kretschmar and there is an amendment prepared that would do away with that whole section and the breakage would stay the way it is now and hasn't been adopted yet, I mean nobody has even seen it, it has been at the council and probably down on Kretschmar's desk. Now Mike has a comment on that too and there will probably be some further discussion because that wasn't going to help you is what the concern was if we didn't give them that breakage over the 11 million that took away a part of the quality we were hoping the bill would have.

Mike Cichy stated, my concern with the breakage is that it is a substantial amount of money when you get into the high end play business no matter where it comes from and the market is going so competitive right we are competing against states and off shore places where the entire breakage goes to the provider so essentially we become noncompetitive in high dollar volume situations. If there is a concern that the service provider is getting the breakage, my preference would be to split the breakage between the charity that is operating the site and the service provider and that way if we need to make some adjustments in dealing with players, we will have a facility to do it, and the flip side of that is if as is envisioned in this that the live track is going to be the charity where the majority of that business will go through with the exception, possibly, of Belcourt, then they will have the money for their own Promotion Fund and if they need to build facilities, the money for building facilities can come out of the breakage.

Chairman Boehm asked if there were any questions for Mike.

Director Meyer stated, I guess I don't have a question I have a comment. Just from knowing the legislators who I have visited here in the last two or three weeks, if the horsemen and the Commission and the providers and charities all aren't on the same page on even any little thing that we want, the chances of passing anything are really, really slim and Chairman Boehm can testify to that when you've 1200 bills in front of you and if Fargo is opposed to it or Belcourt or two horsemen get up and oppose it's likely not going to pass. So the ball lies with us to work it out in this room before it goes to the legislature, which is Wednesday on this bill I think. The Hearing on this Bill and Bill 1390 are both scheduled for 8:00 A.M. this Wednesday in the House Judiciary Committee.

Commissioner Arthaud asked, Dean, what you worked out with Mike then. Dean replied, well I think what he is talking about and this has just been in our discussion the last 10 or 15 minutes when Chairman Boehm got here, is this hardware would be split if we would split it after the 11 million, leave the 11 million alone, I don't think the horsemen or the Commission are risking anything because we aren't getting there now so I don't see this Bill affecting us until we get past the 11 million and if the charities got to keep it and I was uncomfortable letting the provider have it all, because I think the charities are why we do this so it should go there if they can work out a split that we can all be in agreement with. Right now we give it to the charities anyway. I mean we get it in the Promotion Fund and give it back to the tracks or the charities that the Simulcast Sites could have requests piled on their desks now for it so it's not going to hurt it, it's just saves a step; they get the money rather than us getting it and give it back to them.

Chairman Boehm asked for further questions from the Commissioners.

Commissioner Clement stated, I guess since we are not at the 11 million I think some of these issues may change and I just kind of hate to give it up, I hate to give up control of it and I think we should kind of wait and see how things progress with Lien Games and if they can get the big bettors back and I would be careful with what we give up right now and I would probably be reluctant to give up control of breakage. Chairman Boehm asked, on the breakage part Jim and Commissioner Clement answered yes.

Chairman Boehm asked for further questions from the Commissioners or any questions from the audience.

Leigh Backhaus asked, in laymen's terms, what is it changing from what it is present, what is it changing where is the money going and where is it coming from because X amount of dollars is coming from somebody where are you taking it from. Director Meyer responded, on the first 11 million there would be no change. Leigh Backhaus asked, after that who is going to get robbed and who is going to get paid. Director Meyer said, well, if a big bettor came in tax, they would bet a bigger tax break after 11 million and that's basically what it is attempting to get us on a field that other states have got, I mean it was a race in economic development kind of backwards and seeing who could give every state the best break and for a period of four years or five years North Dakota was best and everybody just kept bidding it down and now what Mike is trying to do is to get to where other states are at so we can attract some of these back with a larger amount of money. Leigh Backhaus asked, so it is just taxed on the dollar when he is betting?

Mike Cichy stated, first of all I would like to address the comment earlier that we want to wait for a couple more years. Right now we are in a situation where the state of South Dakota has a bill in their legislature to drop their pari-mutuel tax to a quarter of one percent and the provider keeps the breakage. Director Meyer asked, can I interrupt for a second Mr. Chairman, does theirs have a trigger on it or are they just going to start out at that. Mike Cichy replied, the walk-up OTBs I believe is going to remain at four, which is where they are at now but a telephone account wagering starts at the base number and it's a quarter of one percent and the track, which is the service provider in South Dakota; or I shouldn't say it like that, the regulations were written when the tracks were the only entities so what's continued on now is that the service provider gets the breakage and breakage is a round down. If you place a bet and your payoff comes to \$5.19, some tracks will round off to the dime so you would get \$5.10 back, the track keeps the dime. Some round to the nickel so you would get \$5.15, the track keeps the four cents. Frankly, I was surprised obviously where the tracks were betting to round down to that dime instead of the nickel because I was surprised at how high the breakage.

I guess my question to that, Mr. Chairman, would be we aren't getting South Dakota and us used against each other. You say that the bill in South Dakota and they standing down in front of South Dakota legislators saying well North Dakota is looking at a quarter and you're up here saying South Dakota is looking at a quarter. Mike Cichy responded, no, actually we were using the, Director Meyer again interrupted are there other states that are down to the quarter. Cichy stated well Oregon is down to a quarter but the big player in South Dakota who was operating out of Sioux Falls moved to the Indian Reservation in Flandreau to get out from under the four percent (4%) tax and his agreement with the state was that he made a flat payment to the horsemen of \$75,000 and he has got his own deal with the Tribe. But they lost that income because he moved because the tax break was too high. No, they are not playing off against us, its competition with the Indian Reservations within the state.

Chairman Boehm stated, so the bottom line is in order to get the bettors to come in a sizeable amount it is going to have to be like an amount that would be feasible to them, it has to be cheaper you've got to make money or they won't come here or you know wherever. Mike Cichy stated, the biggest single offshore betting site is at St. Kits and they pay no taxes and keep everything and that's really where the competition is. The competition is only marginal within the states; the competition is more international competition. Chairman Boehm asked, so even with these lower rates they will still go to where there is no tax. Commissioner Clement asked why would they even want to place their bets locally then if they can do it offshore for nothing? Mike responded, there are some political things going on right now where the offshore sites are going to be placed at a disadvantage because they are not affiliated with tracks and they are not making payments to horsemen and the intent of this whole thing is to set up at the live tracks in North Dakota and take the wages on track, get better rates and run more days and become "legitimate" instead of what we casually referred to as boutique meets so that the track itself will be operating its own races, will get more races and gain credibility within the rest of the industry and be allowed to operate with big players because there is a movement afoot within the industry that big players will not be allowed to go offshore anymore, they are going to be forced to bet through a track. Then these people I have been dealing with, they are nice guys but they are not philanthropists. They see it as us helping them and them helping us because they want to place their wagers through a legitimate live track. Commissioner Clement added if the price is right and Mike Cichy answered within reason.

Chairman Boehm stated I have a question from Ken. Ken Pawluk asked, without this legislation what the chances of attracting the volume bettor are that all of this hinges upon. Mike Cichy answered it is going to be very difficult. I mean we went through this, not bad because everybody is trying to accomplish something. We went through this two years ago where legislation was passed to change the tax structure and it didn't come out quite the way everybody had hoped and the end result was that we got, six years ago we were ahead of the competitive curve. We were making moves and doing things that other people weren't doing and they were all playing catch-up and the reverse is true now, that we have lost a step two years ago with the way the bill came out and now we are trying to play catch-up again. Four years ago legislation passed a law in telephone account wagering and internet wagering and then we were out in front of people, so it's back and forth. It is just business.

Commissioner Arthaud asked on this particular bill is it the breakage that is the problem. Director Meyer answered I think as far as the concern of the people I have talked to that was the concern because we aren't at the 11 million now for the biennium and the breakage seemed to be the same as the horsemen were concerned about because it wasn't going to go to the Promotion Fund and I mean we all, as Commissioners and Director we have to be concerned

with that. Just looking at our funds, and I know the Commissioners are aware of this, is basically we've got this year and next year funding things at the level close to where we are at now and basically we are out of business, especially with the Promotion Fund. Chairman Boehm said, see it's sort of a wash. If the breakage goes to the race track they will need less promotion money you know, so I mean it would sort of be a horse apiece. If we take the breakage and give them more promotion money, it comes down to the same difference. Legal Counsel Peterson stated the only charities aren't the race track. Chairman Boehm, right, there are some other charities besides the horse park. Mike Cichy stated, if inadvertently or by design, whatever, this Bill would help the other charities because they too would get – Director Meyer stated for example if you are talking other charities you could be talking about Fort Abraham Lincoln was one, their site is shut down now, but if they would have the breakage maybe they would have stayed in business. Mike Cichy, added possibly, but they would have more money and then if I were a charity and I saw the threshold of 11 million was reached fairly early, I might want to renegotiate my contract with Lien Games and we would look favorably on that to give them more money because there would be more money there to split up. Leigh Backhaus stated, the bottom line is there is only X amount of dollars and its got to be coming from someplace and you say you are going to give it to the charities and it is not going to the horse people, well, somebody is getting shorted somewhere. Mike Cichy added no, not really. What we're talking about now is money that we don't have. Director Meyer stated, this is new dollars from other bettors. Mike Cichy, added this is new dollars, nobody is taking away your old dollars and nobody is changing the structure that supplied the money in 2004 that stays the same. Leigh Backhaus said, that's 2004, we are talking about the future. Mike Cichy stated but the future right now is pretty grim because the system is not going to be viable on the \$5,250,000. That's what we really are discussing here is how we get more money coming in and my reality is that if we restructure the taxes, bring more high volume play in, it can tend to run like a cut rate gas station, you're just going to run a lot of numbers through there and cut your profit margin down on each number, but if we run enough numbers through there, the horsemen will still get Purse, Breed, Promotion money from the state, we would just have to run a lot of money through the system to get out of the debt. Taking what amounts of 3.75% off the top is not viable for an account wager or internet betting, it's just not in the cards, and it's not the way the systems operate.

Chairman Boehm asked Ken for a response. Ken Pawluk stated, as I understand it right now the betting is at five and one half million and you are going to cap this at 11 million before these new rates kick in. Is that correct? Mike Cichy answered yes. Ken added, so it has to get twice as good as it is now before there is any impact from this. Director Meyer stated just a little better. The 5.2 is per year, the 11 million is per biennium. Ken added it is going to be capped where it is at before the new rates kick in and is there really any realistic chance of increasing the state handle without this. Mike Cichy answered no. Chairman Boehm stated, the way it is right now with the money we've got in the funds if we do the same amount of wagering that we do, we will be out of business in a short time, with the promotion money and the breeders and the purse money. It's just a matter of time because the 5 million a year is not a lot of money to these funds so we are going to have to do something. Whether this is the answer or not, that's to be decided yet but we have to do something different to promote this horse industry in North Dakota. We have to make it viable and grow so what the answer is, I guess that's up in the air right now. We are open to suggestions, if this bill needs tweaking or whatever, we're here to listen. Director Meyer stated, I think what I would say again you know we all have to be on the same page. Mike Cichy added what I would like to throw out is that if we do it this way, the way we are talking right now, and if we are really lucky in two years we could be standing here fighting over where all that money went and who should get more but right now we don't have any money to fight over and it just isn't there and as the system is structured now it isn't going to

get any better. Like I say, in two years if somebody wants to come and look in everybody else's pocket, it would be fun. Chairman Boehm stated, what if we, just as an additional comment, what if we leave the breakage the way it is and just lower the taxes and then if we get more money in breakage, the commission can give the charities and promote the money, so what's the difference there. I mean its either you take it directly or we give it to the charities, that's the Promotion money, right Dean. Director Meyer answered well yeah and I can see where he wanted to leave it but I think the compromises is to go with split the breakage between the provider and us because we give it back to the charities anyway. Legal Counsel Peterson stated we don't give it back to the charities except for horse racing. Director Meyer added well, we give it back to the Simulcast Sites, I mean they have request for it. Director Meyer responded, I think the requests are from \$3,000 to \$10,000 a site. I think the last time they gave about \$3,500 to each simulcast site for advertising. Mike Cichy stated, and advertising money for walk up OTBs is, other than the Triple Crown, is virtually throwing it down the rat hole. Director Meyer stated I think that's what most of them use for by the bills I have seen and when they get close to Triple Crown time they do some advertising. Mike Cichy, I'm not so sure, and I don't mean that bad either is that nobody has figured out the secret of attracting players to walk up OTBs and keeping them there. Chairman, but back to your suggestions on this. It is okay but how do we want to shuffle this around so everybody is happy because Dean's right, if we don't all go in there humming Kum Ba Yah, we are not going to get this thing passed and then we've got a problem.

Commissioner Clement stated if this legislation was passed if you would like it have you made projections that you could share with us over the next two to five years as to whether where it might take the handle and what the effect would be on the racing funds, etc. Mike Cichy answered yeah, let's be just as conservative as possible and say 100 million in handle, that makes my weak math numbers work. Then that works out to. Commissioner Clement asked which year would that be, this year or the following year. Mike Cichy answered that would be '05, so then that would be \$16,000 to Purse, \$16,000 to Breed, \$16,000 to Promotion and \$16,000 to the state. Then assume, just for the sake of the discussion, assume that the charity, the track in Fargo, got a half of one percent for their end of it that would be \$50,000. So if you say that we do 200 million, you double the amount of that type of handle that's floating around the world right now is in the neighborhood of 2 billion dollars, so how much of that we can capture is pretty much up to us. I mean, I don't want to throw around too big of numbers, but I am here and we've spent a lot of time setting this thing up. I'm fairly optimistic that all of us would make a profit. Right now I have a group of players in our system that are doing over a million a week and that's about four different people. Commission Clement asked you say right now they are doing a million a week? Mike Cichy, answered yeah, but not in North Dakota, oh they are in a licensed site and if they were in North Dakota, I would let Dean know. I would even let him know in advance. Commissioner Arthaud asked what do you estimate your breakage at a hundred million. Mike Cichy answered well I thought I did my numbers pretty well, but we're talking about \$500,000 - \$600,000. Like I say, it's obvious to me that more tracks are rounding down to the dime than down to the nickel because, yeah, you see the rule of thumb has always been about one half of one percent. Director Meyer stated if it carried forward Commissioner Arthaud, this year we did \$23,000 on 5 million dollars so on 100 million we would be at \$460,000 breakage. But, I think we probably have to worry more about 13 million or 14 million than 300 or 400 million. Mike Cichy added so we are in the same situation that a lot of people are in, we need to run big numbers through this thing.

Chairman Boehm stated well we all know what big numbers do; we have seen it in the past. It takes a lot of bettors or whatever, new bettors who wager a lot of money to get these percentages. As far as the legislature goes, if we come up with whatever we decide here, is

there a difference in selling this bill to the legislators one way or the other more or less fallible? Mike Cichy stated I don't sense that there is, the key is that the various groups here, the horsemen, the service provider, the track and the racing commission are all behind the bill. If one or the other, those of us who were around two years ago, it wasn't very pretty when squabbling took place in front of the hearings and that was one of the things that hurt us. The flip side of this is that the whole thing, when we were squabbling, not squabbling, we were discussing the tax issues and who gets the money, my feeling if I'm speaking to the legislature about this is that this has to be looked at as an economic development bill and the economics of providing a viable horse racing industry in North Dakota, that's where the money goes to out state North Dakota when we set up and run 30 to 35 days in Fargo and Purse, Breed goes to the horsemen, then taxes and people that are staying here and we have got 15 to 20 people on payroll in North Dakota that I see a lot of effort going towards economic development in North Dakota. I guess to me, that's probably the easiest way to get it in our area anyway, is lower the taxes and making the business be viable. Chairman Boehm added the state does it all the time. For big business they lower the tax or some kind of incentive to lure these people here, I mean that's how it works, give them a break and they come or hopefully come. Mike Cichy added and that is what South Dakota finally woke up to down there. I mean, those were the guys that took off the caps on interest rates so that they could bring in credit card company centers in Sioux Falls and Mitchell or wherever they put them.

Chairman Boehm asked Leigh you've got a question? Leigh stated you mentioned a little while ago about a couple of years ago when you were sitting at the capitol, I was there, how much different is this bill compared to that one? Mike Cichy answered night and day. The other one had thresholds of 30 million on WPS, 100 million on exotics and then once you got up there, the breakage number changed and there was still a half of a percent going into the Promotion fund and there was 1.75 cumulatively going to Purse and Breed and it just wasn't competitive, I mean it just had no effect whatsoever, nothing changed except the handle amount. Commissioner Arthaud asked the amendment that you propose Kretschmar did you run that pass Mike and the horsemen. Director Meyer answered no, because it was right at the, well, I did run it by the horsemen and they thought it was pretty good but Mike didn't like it. The Bill hadn't been heard yet so the amendment hasn't been offered yet, but it's prepared. Commissioner Arthaud asked so what did the amendment say again? Director Meyer answered you've got the bill in front of you; it did away with subsection 3 starting on page 2. It didn't delete it but it just left all that language the same so the breakage was the same as it was now, the Commission would have got all the breakage not only on the first 11 million but on everything after that. And kind of the reason I did that was I was on the phone doing it from here and talking to the legislative council and trying to explain it and I was having a hard time getting my point across and I just said well, do away with the whole thing for now. So then tax break, if that amendment was adopted, the breakage would stay the same, we would get it all and when I talked to Mike about it he thought I was going to do that just on the first 11 million. What Mike is proposing now is that the breakage would stay the same on the first 11 million so the handle we had last year, if that's a forecast of what we will use the next year or the next two years, this bill wouldn't affect us at all, where it would affect us is if it does work and the tax goes down, then the breakage would be worth arguing over. I think the compromise position is that we split the breakage off and leave the 11 million the way it is now, the tax stays the way it is now, after that we go to a quarter percent tax and compromise we split the breakage whether we do it with the Commission or the charities and since I have a job I would say stay with the Commission so I can justify my existence and give money out in the spring. Commissioner Arthaud asked is that a killer for Mike. Director Meyer answered yeah, that's the question, and do we want to kill Mike or the bill. I mean that's what it's got to come down to. If the horsemen don't go along with the bill, we kill the bill and maybe if it doesn't help you – I just don't know which way is the best. Mike Cichy

suggested split it three ways. Director Meyer stated then it really gets complicated. The reason you want them to be able to negotiate with this portion. Mike Cichy stated yeah, I want the track guys to be able to negotiate with the horsemen because ultimately in their position as the charities, I want the track guys to be negotiating with the players. Needless to say, I will help and coach but some of our problems in the past that I don't want to go into too deeply; it's been my feeling for quite a while that the charities, and in this case the track, should be dealing with the players and negotiating with them and then it's my fondest dream that the track and the horsemen will have knock down drag out fights over the money and how many days they are going to run and the purses and I can stand there and watch.

Commissioner Arthaud asked Mike if we split it with the charities and service providers is it going to kill your support. Mike Cichy answered no actually the charity and the service provided is just fine. There are some political reasons why that wouldn't be a bad thing at all. I mean the reality of this business is where we're going with these rebaters, is the track absolutely has to be involved with them right up to their eyeballs because this is my personal opinion that in another year these offshore rebate shops are going to be just fighting to stay alive and my take on this is that the service provider survival and the track survival is tied in with these big players. They want to come up here because they don't think that those deals off shore are going to be there any more. I don't know if what we have planned here will work, but it's our best shot.

Chairman Boehm stated, Commissioners we're going to have to get off the dime here as we are going to run out of time after a bit so we have to make a decision one way or the other because we have four more bills we have to discuss. Commissioner Clement asked do we have to make this decision before the meeting on the 25th. Director Meyer answered yeah, the hearing is on Wednesday. Chairman Boehm stated so we need to make a decision how we want to do this, if we want to go with what was proposed or with Dean's amendment on top of it. Director Meyer stated well I will just leave mine off. I was just trying to keep the horsemen from calling everybody and killing the bill before we got to that point. I think we have to keep it alive to at least to get to the hearing. Somebody from the audience stated, if you don't have the bettors, we don't have anything. Just like you say, two years you're done and you're without a job. Chairman Boehm stated fellow Commissioners and guests, we've got to have the bettors to make money, and I mean it's the wagering game that's how it is. Commissioner Arthaud asked if it would be split between the charity and the service provider are the horsemen going to kill it. Director Meyer answered we hear possibly. Chairman Boehm stated on behalf of the horsemen without the bettor, the horsemen don't have anything either. I mean we have to have a race track; we've got to have promotion money and breed money and purse money for anybody to be happy, so let's get on the same page here. Commissioner Arthaud stated but again, can you convince the horsemen that this would be a good thing to do? Chairman Boehm stated well, they're going to have to figure this out, without bettors they don't have anything. Mike Cichy stated if we agree to just make the original change on breakage on the first 11 million and everybody supports this thing through the House can you go back in and make amendments in the Senate and fight it out in the crossover? Chairman Boehm answered, yeah; it's not over till they leave. I mean the last day and the last bill I have seen a lot of things happen. Nancy Bayer added they were unaware of just splitting it so I don't know if that will make a major difference or not. Mike added the point is if they can live with it for a week or two and get us through the House. Director Meyer stated at 11 million it would stay the same and split the breakage after that. Chairman Boehm added the other thing, if this Bill passes the way it is and then there is so much money the people think it is going to the horse park or whatever, there's another Session coming up next time two years from now. Things don't always stay the same, we can change it.

Jim Tilton added I'd like to talk on this comment, the thing of it is that we can't become too short sighted in this thing because if we get bettors the money doesn't just go to the Promotion fund, the money goes to the Breed fund and it goes to the Purse fund and we've got to have money in those two funds too and we can talk all we want, we cannot run \$25,000 purses every year and expect to have races because it's just not going to happen. So the thing of it is what you're talking about is the money coming back to the Promotion fund but it also has tremendous impact on the Breed fund and the Purse fund so let's keep that in mind. We all forget about the general tax; you know the general fund, that's going to take care of itself. I think the thing of it is that we better be looking for ways that we can bring more money in here, not looking for ways to take and decide the script this little p and this little p, you know.

Chairman Boehm stated I've got a question for the horsemen, if they're not quite deciding which way to go. How much did you get for running a race in North Dakota five years ago? How much money did you make when you won a race five years ago? Leigh asked you mean the purse money? Chairman Boehm answered yeah the purse and the breeders. So what did you make when you won a race? I know some of them got \$20,000. So, I mean, this is what could happen. Leigh Backhaus stated the reason the horsemen are scared of this is because every time something comes up they're part goes down. They are scared to lose what little they have. Chairman Boehm added but if we don't have bettors they are going to have nothing. Leigh added I'm sure if you get the knowledge to them with this 11 million that the split on top and what comes after it I'm sure they will go along with it, as far as it is now. Now if it could change all the way through. Chairman Boehm stated I think for the time being, Commissioners, what I'd like to see is go with the bill and then pass it in the House and if any changes need to be made when it gets to the Senate side, we'll deal with it there. Director Meyer, go with the Bill with an amendment to split the breakage? Chairman Boehm stated if that's what most of the Commissioners want. Director Meyer stated, I think you need that, I know the horsemen wouldn't go along if we didn't get any of the breakage. The 11 million stays the same and then split the breakage after that.

Legal Counsel Peterson asked split the breakage how? I mean I don't understand that exactly, to the Promotion fund? Director Meyer stated between the Promotion fund and the operating charities is what you're talking, right. Mike Cichy stated, no, we split the breakage three ways. Director Meyer stated oh you are going three ways. Mike added yeah, we split the breakage three ways. So the Promotion fund gets a third, the first 11 million in the biennium stays the same, nothing changes in that statute. It's as it is right now and over and above that the changes kick in but instead of the service provider getting all the breakage, the service provider gets a third of the breakage, the charity operating the site gets a third of the breakage and the Racing Commission for their Promotion fund gets a third of the breakage. Director Meyer asked well let me ask Roger, as our auditor, is that feasible to do and watch fairly easily.

Jim Tilton stated I'd like to ask one question. We keep talking about the horsemen getting the breakage from the Promotion fund. How much money comes out of, how does the money out of the Promotion fund go back to the horsemen. Scott said that breakage third why can't we have that. Mike Cichy stated because I want to build a grandstand with it at the track. Scott added well that's fine, I agree with you 100 percent with you there.

Leigh added excuse me, but there I have a disagreement that the state has to keep building this track. The track needs to stand on its' own two feet period. Mike Cichy added well I have to jump in right there. The players build the track because that's where the money comes from. And we go back to this, if you don't have the players, you don't have the track. In fairness to what's going on here, this is an international problem but right now the horsemen are only

getting Purse and Breed. The Promotion money goes to the Racing Commission to dole out as they see fit and to the track to use as they see fit. Now if everything breaks the way we want it, the reality is the horsemen should be fighting with the track over how that whole thing goes, just like everybody else.

Chairman Boehm stated so Commissioners are you in favor of supporting House Bill 1389 with the amendment Dean has talked about, splitting the breakage three ways. What's your feeling on that, we need to get on with this. Are you in favor of that and then we can make a motion and then have discussion. What's your thinking?

Commissioner Arthaud made the motion to support House Bill 1389 with the amendment to split the breakage three ways. The motion was seconded by Commissioner Clement.

Chairman Boehm called for discussion. Frederick what is your feeling? Frederick responded I feel that if we are going with the third that would be a better deal to help everybody more. Commissioner Pladson agreed. Chairman Boehm asked so is there any further discussion. Commissioner Arthaud added the only discussion Mr. Chairman is, is everybody in the room going to be supportive now, do you think? Chairman Boehm asked for a show of hands for all who would support this as it stands right now to go to the legislature to support this bill with the three way split. Leigh answered yeah as far as it is now. There are a few more questions. Director Meyer stated if we could get it through the house without opposition so that we could get it passed. The horsemen have their banquet coming up on the 12th and we could go over and talk to them and explain what the deal is and the argument was if they get the Promotion money or the track gets it, we can fight that out in this office when we dispense the money. That's our job here. Commissioner Arthaud asked if Mr. Cichy, is he fine with this, Mike answered oh yes, he's just fine. Commissioner Arthaud continued how about the Fargo track and the whole works on. Chairman Boehm confirmed the people in the audience pretty much support it, I don't think we have seen any objections did we?

Commissioner Arthaud asked who is going to draft the amendment. Director Meyer stated I can get the amendment drafted and visit with the Sponsor Kretschmar about it so he doesn't think we are sneaking up on him from the back.

Director Meyer stated this will be on the bill, there's no effect on it until after 11 million on our current, and after 11 million the tax drops to a quarter of one percent split four ways, the state and the three funds and the breakage is split three ways after 11 million. Does that sound about kind of right?

With no further discussion Director Meyer called the roll:

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| Commissioner Arthaud | - | Yes |
| Commissioner Clement | - | Yes |
| Commissioner Frederick | - | Yes |
| Commissioner Pladson | - | Yes |
| Chairman Boehm | - | Yes |

The motion carried unanimously.

House Bill No. 1390

Chairman Boehm stated we'll go on to the second bill and how many minutes do we have left, Helen. Administrative Officer Tessmann responded, half an hour. Chairman Boehm stated we've got thirty minutes left. Director Meyer stated House Bill No. 1390, if you just want to stay there, Mr. Cichy, 1390 is the bill I think is the most important bill and this allows simulcast wagering on the transmission of historic previously run horse and dog races. What it is, I will quickly explain it and Mike can correct me if I'm wrong. It's a machine that has a bank of approximately 100,000 races that have been run previously, you have information that allows you to handicap the horses yourself, you place a pari-mutuel wager on that machine when and race is run, it is a pari-mutuel wager and you are betting into a pool. There are three states that have authorized it, two that use it. It was invented by AmTote and some in combination with Oak Lawn Race Park in Hot Springs, Arkansas. They have determined that it is not a lottery and it is not a slot machine, it is pari-mutuel wagering. In Arkansas the first full year was 2002, they wagered \$27 million over these machines, there was about \$50 million in 2003 and 2004 was \$74 million. The take out is 10% instead of the normal 20%, but it brought millions of dollars in there. The machine has surpassed simulcast.

A closer comparison would probably be Wyoming looking at our population. They put in 70 machines last year in the city of Cheyenne. What they did, their Racing Commission asked for the Attorney General's opinion whether they had to change their statute or not to allow historic races or if they could just go with horse races because that's the way their statute read. Their Attorney General did not respond so they put out 70 machines. The District Attorney in Cheyenne would not allow them in Cheyenne so they lost a big part of the state. I'm waiting for the total handle, but I have the taxes. I think their tax is one percent. Out of ten percent take out I think the state was getting one percent. They just had two funds, the state general fund got \$110,000 and the breeder's fund got \$30,000 last year, with 70 machines and not counting Cheyenne. The state of Oregon has determined that they could put them in, but they have not.

With that I will turn it over to Mike to give us a quick synopsis of it. Chairman Boehm asked are there any questions for Mike? Commissioner Arthaud, my question is how does this handle get divided then? Director Meyer stated well what it is, it's taxed the same as Simulcast it would be the same. Commissioner Arthaud stated that answers my question. Director Meyer continued that the only thing different on the total tax like on our taxes or on a take out at a race track is 20 to 25 percent depending on win, place and show bets or exotic bets. The take out on these machine bets is 10 percent, it is negotiated and spread apart, and our take would probably be one percent split up. But if the machine does the taxing just like a tote machine does.

Chairman Boehm stated we have a question from our legal council, Bill? Bill responded I don't have a question; I've got some comments concerning the bill. I think there are some real serious problems with the way it's done. I don't have an opinion about whether it's a good policy or not. Under the bill, all they are doing is redefining the term "racing" to mean live or simulcast horse racing under the certificate system or simulcast dog racing under the certificate system including the transmission of historically previously run horse and dog races. The first problem with that is, I'm not so sure that that's very limiting the transmission of historic previously run dog races or horse and dog races and I think there is a serious question about whether or not you are authorizing other forms of gambling other than what you are talking about here with these machines. I think that needs to be more specific to describe exactly what it is that's being allowed here by the legislature. Perhaps more importantly than that when you agree to define the term racing, racing isn't used in a number of statutes which should apply to this form of wagering. For instance, under 53-06.2-10 it says "the certificate system allows the

licensee to receive money from any person present at a live horse race, simulcast horse race or simulcast dog race.” It doesn’t say anything about racing so that presumably wouldn’t be included as applicable to this form of gambling. Same thing with 53-06.2-10.1, simulcast wagering. It talks about simulcast pari-mutuel wagering may be conducted in accordance with this chapter and interim standards. It doesn’t say anything about racing so presumably the provisions of that section wouldn’t apply. The bet pay out formula statute wouldn’t apply because it says for any day of a live race meet or simulcast day in this state. It doesn’t say anything about racing so presumably that would not apply and there would be no taxes taken off. So the way it was done I think was poor. I think a better way to do it would be to define simulcast as including this form of wagering and be more specific about what is being authorized.

Chairman Boehm asked if there was anything else. Bill answered that’s it. Chairman Boehm asked who drew this up. Mike Cichy answered the people at Oak Lawn suggested the wording, we had the demonstration for the members of the Attorney General’s office and the reaction we got there suggested that maybe we should mention it specifically. There, again, all we are interested in is having us having the opportunity to run the machines, so if there are some necessary changes, let us know and we’ll make them. Director Meyer asked that would leave the Commission with the discretion of where machines went. Could they go anyplace or could we limit it to a track or to a simulcast site, is what I guess is what we want to know, where would the Commission’s authority lay? When you go to legislature and they said new expansion and they said new expansion of gambling can I say no, because we authorize them only in our simulcast sites or only at the Fargo track or only at Chippewa Downs. Legal Counsel Peterson answered well, my opinion is it would be disingenuous to say that it’s not expansion gambling because you are but now you are doing it again. It is gaming you don’t have now. Director Meyer replied yeah but the state said they were going to expand gambling, they got into the lottery business, not us. Mr. Peterson added it’s gambling that you don’t have now. Mike Cichy stated suppose we say this is just discussion here; suppose we say, okay thank you for your opinion and go ahead and put the bill in anyway. Chairman Boehm added if down the road the bill is found to be illegal, we have a challenge, the Attorney General deals with it. Mike Cichy stated there was a challenge in Arkansas when they put the thing out. Chairman Boehm stated I mean it can always be challenged. Mike Cichy stated but I guess what I’m looking for from you is some guidance. Legal Counsel Peterson stated the legislature can decide if there is going to be an expansion of gambling, that’s what they would be doing with this bill. I mean if they pass the bill and expand gambling it’s not illegal. Director Meyer asked but you still think it should go under a different section. Legal Counsel Peterson continued well it needs to be done differently because this is just absolute, I don’t think it works with the current law that you have. Mike Cichy added I don’t want to get too arcane here, but there’s a lot of things going on in simulcast right now that don’t work with current law. We’ve had discussions about the Pick Six. But for purposes of getting through Thursday morning at 8:00 do we go the same direction there as we went with the previous bill? Director Meyer stated well, I think we should see how many, Mr. Chairman, how the Commissioners feel about it, about using this machine in general.

Chairman Boehm stated you’ve all got a copy of the Bill and heard the discussion so far, what are you feeling? Commissioner Arthaud stated my feelings there are to go with what Bill had to say and I think Bill is just trying to warn us about something that is just going to get slaughtered. Why do that? Legal Counsel Peterson replied, well, I’m not saying anything of the sort by the way, I’m complaining about the form of the Bill. Like I said, I have no opinion about whether this is good policy or bad policy. Commissioner Arthaud stated I didn’t mean to put words in your mouth Bill, but you’ve got concerns about how the bill was drafted, and if you’ve got concerns about it and I’ve got concerns about it. Mr. Peterson continued I guess what they’re asking

though is fundamentally do you want to support having these machines. Director Meyer stated I think the thing to point out is that there are no race tracks that are surviving or none that are surviving and very few that are prospering without some other gaming to support it. I mean, everything you read, every track you look at is that they have to another avenue of income besides just the horse racing. Commissioner Arthaud added to answer your question I would support the machines in the proper format that everybody is comfortable with.

Commissioner Frederick asked how many machines are we talking about and where are they going. Director Meyer, I think that would be up to the Commission, the Commission will have the say on that. I'll go back in the history of it. Arkansas started with 140 machines, they have 285, and I believe they are all at Oak Lawn at the park, at the race track. Wyoming I don't know where they're 70 machines are scattered out at. They're spotted all over the state I think. Mike Cichy stated that would not be the direction that I would go initially until we found out how they were received in one site in Fargo because, first of all, we would have access to lots of Minnesota money across the river and there are some technical infrastructure that's necessary that creates some overhead and once again, run them there for a year and see how they go and then if it appears there is some demand then the Racing Commission can filter them out into their selected sites as they choose.

Chairman Boehm asked Commissioner Clement? He replied I would, if it is worded to where Bill Peterson is comfortable with it and supports it.

Chairman Boehm asked, DeAnn? Commissioner Pladson replied well, I just don't know if I have enough information about this type of technology to be able to make a decision on it. It certainly sounds good it sounds like it could potentially bring some money in and that's good but honestly I don't feel like I have enough information and it's really hard for me to tell the context of the amendment to the subsection 11 without looking at the whole ball of wax, so I don't know if I could be very helpful in that regard today. Chairman Boehm added I think at this time all we want to do is decide if the Commission wants to proceed with this bill and have it introduced and support it and then see where it goes. Director Meyer added and Mike can get you the information on it. I think one of the ways, and I've done a lot of research and reading on it, and I keep telling Bill I am an unbiased supporter that I think it is going to be needed, I think this could be really be big. But I think the way to describe the track to different clientele, what they found and people were concerned when it came to Arkansas that it would detract from live horse racing and simulcast racing. What they found was that a different clientele through the track that ended up ultimately doing some wagering on horses and on simulcast because they were there anyway but its designed for the people that like electronic games, whether they be so-called slot machines or something else where it's a faster action than waiting 20 minutes between horse races or 25. Commissioner Pladson asked so you feel that the amendment to this law would permit that. Director Meyer answered, yeah. Commissioner Pladson continued so we're not looking at other places in the law that needs to be amended to be able to allow a different kind of setting. Director Meyer answered no because I think our simulcast if we put it in a section that Mr. Peterson was talking about, we could cover that where we cover that with our license. I think the thing, the way to describe it the Commissioner in South Dakota or in Wyoming explained it to me. He said contrary to a lot of things, he said there's lots of slot machines disguised to look like Bingo or horse racing. He said this is horse racing designed to look like a slot machine to attract this clientele. Its' different people and its legitimate horse racing. It's just a different kind of gaming where you don't have sit and handicap for 20 minutes to make your bet. Mike Cichy added that the problem that horse racing is based as far as product is concerned is that our parlors are essentially Thursday, Friday, Saturday and Sunday shops with the emphasis on Friday, Saturday and Sunday, whereas this equipment allows you

to be a seven day a week operation. Chairman Boehm so basically what we have to decide is do we want to support this bill in theory, so what are your wishes. Do we want to support this bill, House Bill 1390 in theory? We know its going to need a lot of different wording. Commissioner Pladson added yeah, in theory definitely. Chairman Boehm asked so does anybody wants to make a motion.

Commissioner Arthaud made the motion to support House Bill 1390 with amendment to meet the approval of Legal Counsel. Commissioner Frederick seconded the motion.

With no further discussion Chairman Boehm asked Director Meyer to take the roll.

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| Commissioner Arthaud | - | Yes |
| Commissioner Frederick | - | Yes |
| Commissioner Pladson | - | Yes |
| Commissioner Clement | - | Yes |
| Chairman Boehm | - | Yes |

The motion carried unanimously.

Senate Bill No. 2344

Dean Meyer stated, so we don't run out of time I'm going to cover a couple of them kind of quick. I'm going to change the order. Senate Bill 2344 is one I asked to be introduced and I did it without Commission approval because it was the day of the deadline when I discovered this bill and it's a bill that allows us to keep the fees, license and fines. It was a bill that was introduced, I believe, by an interim committee, or else Paul Bowlinger last session. It passed the Senate with only one vote against it. I believe the fiscal note is around \$30,000 but I'm not sure, I haven't seen that yet. The reason it was brought up was because of people's concern where we are taking money out of the fund this would give us some of our own money back so that we wouldn't have to dip into the fund and I asked Senator Heitkamp to put in the very last at the deadline for a Senate bill. It is a bill you are probably familiar with if you were on the Commission before; I believe you people have discussed it. The hearing for this one has not been set yet; at least it wasn't yet this morning. That's Senate Bill 2344.

Chairman Boehm asked for any questions? What are your wishes?

Commissioner Arthaud made the motion to support Senate Bill No. 2344. The motion was seconded by Commissioner Clement.

There being no further discussion the Chairman asked Director Meyer to take the roll.

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| Commissioner Arthaud | - | Yes |
| Commissioner Frederick | - | Yes |
| Commissioner Pladson | - | Yes |
| Commissioner Clement | - | Yes |
| Chairman Boehm | - | Yes |

The motion carried unanimously. .

Senate Bill No. 2352

Director Meyer reported Senate Bill No. 2352 was heard this morning. I did testify on behalf of it. It was just a bill that exempts the horse park and Horse Race North Dakota from property taxes. It treats them the same as they do a fair ground. That was heard this morning at 11:00 o'clock in the House for the Senate Finance and Tax Committee and it hasn't been acted on yet and probably won't be this week, or maybe it will be this week. There was some discussion on it. They are here if there are any questions. But it would grant the horse race facilities and other equine facilities around the state the same status as non-profit as the fair ground and basically puts them the same and they won't have to pay property taxes. They have negotiated their tax rate down, so it wasn't a big hit but I think they said originally it was \$33,000 a year and it was something that wasn't expected from the city or the county when they started to deal, they thought they were exempt. This just makes that clear.

Chairman Boehm asked for any questions. Do we want to continue supporting this bill which was heard on the Senate side? Director Meyer continued if I have your motion supporting it, there were some questions that came up this morning and it will give me a little opportunity to lobby on it. I think probably is a with the amount of tax right now its not real significant, but it could become significant if something happens so I think it is important.

Commissioner Clement made the motion that to support Senate Bill No. 2352. The motion was seconded by Commissioner Frederick.

There being no further discussion Chairman Boehm asked Director Meyer to take the roll.

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| Commissioner Arthaud | - | Yes |
| Commissioner Clement | - | Yes |
| Commissioner Frederick | - | Yes |
| Commissioner Pladson | - | Yes |
| Chairman Boehm | - | Yes |

The motion carried unanimously.

Senate Bill No. 2340

Director Meyer stated that on this one we had a lot of calls at the office. It is a bill introduced by Senator Bowman on behalf of the Attorney General because it was too late for agency bill. It is a bill that removes us from the Attorney General's Office which sounds kind of scary at first, but in visiting with the Attorney General about it; it gives him a little freer reign. Right now the Attorney General is asked to investigate us and is basically investigating part of his own office. This would let us stand alone much as the Wheat Commission or the Beef Commission or the Barley Board. We would be out there; it has no effect on us as far as the fiscal impact. People were concerned when they read the Bill; we would have to pay rent. As you are aware, we do that now, it's all in our budget. We pay for phone; printing and we pay \$7,700 a year rent for the office space. I talked to Attorney General Stenejem this morning and he assured us we could stay in this office. The only concern I have and I expressed that to him again this morning is that we have to find a way that I was uncomfortable with a staff of two people having the fiscal responsibility or the availability to write checks without some kind of oversight or checks and balances. I said what I was concerned about is that I liked the system we have no where we request funds, I have to sign off on them, the minutes of the meeting go with the request, a copy of the statute authorizing that use of the money goes; its not a handy deal but it's a very transparent thing that protects both us and the public from misusing any funds. I think if we can

get that taken care of I have no problem with us being a stand alone deal as long as I can use the legal counsel.

Chairman Boehm so when we go before the legislature for appropriations, we go on our own in the future? Director Meyer answered yes. Chairman Boehm asked what are your wishes, we need questions. Commissioner Arthaud asked the Director what was the Attorney General's response. Director Meyer stated when I talked to him today, just briefly in the hall, he said they'd give us Kathy Roll and we could work something out. It may not end up being with Kathy Roll or maybe somebody in OMB that we would be dealing with, but we could keep the same kind of paper trail for any checks we write so that eased my concern. I'm sure you would share that, that that's very important to do. The rest of it, I know there's a lot of concern about the cost of it, but that's virtually the same as what have now and it gives them a little freer reign. His concern and the reason he introduced it is he cannot tell me what to do or tell a Director what to do, he can't hire or fire a Director, as you are aware, you guys appoint or hire the Director but he doesn't appoint you.

Chairman Boehm, what are your wishes, we are running out of time. Director Meyer suggested the Commission have a no stand on this Bill.

Commissioner Arthaud made the motion to support Senate Bill 2340. Commissioner Frederick seconded the motion.

Chairman Boehm stated so we have a motion and a second. On this bill I'm a little uncomfortable, if everything is working, why fix something that isn't broke. Director Meyer stated I think this might be another one like the first one where if we go along with it and if there are questions that come up at the committee hearing I'm sure that we can address this as we go along. I would like to have a longer term commitment, something on the office space that we will have it and not get booted out the first of April, but he assured me we wouldn't. Chairman Boehm asked for further discussion. Director Meyer stated this bill will be heard on Friday morning, I believe, at 9:30. on Friday at the Senate Ag Committee.

There being no further discussion, Chairman Boehm asked Director Meyer to take the roll.

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| Commissioner Arthaud | - | Yes |
| Commissioner Clement | - | Yes |
| Commissioner Frederick | - | Yes |
| Commissioner Pladson | - | Yes |
| Chairman Boehm | - | No |

The motion passes.

Agenda Item #2

2. Other Legislative Issues

Chairman Boehm asked if anyone was aware of any other legislative issues concerning the Racing Commission. There was none.

Adjournment

Chairman Boehm stated all items on the agenda had been completed and asked for a motion to adjourn. **Commissioner Arthaud made the motion to adjourn. The motion was seconded by Commissioner Clement. All commissioners answered yea.** Meeting adjourned at 2:30 p.m.